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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/738,683 | 12/15/2000 | Lester G. Ward | 2400-563 | 9969 |
| 27820 | 7590 | 03/03/2004 | EXAMINER | |
| WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512 | | | BARRERA, RAMON M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2832 | |

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/738,683

Applicant(s)

WARD, ET AL.

Examiner

Ramon M Barrera

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 9, 13, 15 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 10-12, 14, 16, 17, 21, 22 and 24 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/29/01.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in a response filed 10/29/03 is acknowledged. The traversal is on the ground(s) that Claim 13 is deemed readable on the elected species. This is not found persuasive because in Figs. 1-3(elected species I) the magnet 20 is not attached to either layer 32a or 32b as recited in Claim 13.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 4-7, 9, 13, 15, and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "32b" in Figure 2 has been used to designate different layers. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 8,10,11,12,14,16,and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Franzke, et al., newly cited.

Franzke discloses magnet 5, actuator (10,13), membrane switch (4,6,7,8,9) with first 4 and second 8 layers.

6. Claims 1, 2, 8,11,12,14,16,and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Retter, cited on Applicant's IDS.

Retter discloses magnet 12, actuator 20, and a membrane switch with first 26 and second 22 layers.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Retter.

Retter discloses the claimed invention except for its use in a fuel dispenser system. Retter, in col. 1, confirms the widespread usage of membrane switches in electronic devices of almost every description. The Examiner takes official notice of the use of membrane switches, which may take the form of soft keys on a keypad, as input devices in fuel dispenser systems. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ Retter's membrane

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switch in a fuel dispenser system for the purpose recognized in the art of Retter, as discussed above.

Allowable Subject Matter

9. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: Franzke, the closest prior art of record, failed to disclose positioning the actuator within one of the first and second layers.


Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramon M Barrera whose telephone number is (571)272-1987. The examiner can normally be reached on Monday through Friday, except Wed., from 9 to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin G. Enad can be reached on (571)272-1990. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ramon M Barrera
Primary Examiner
Art Unit 2832

rmb